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ant, walking in a place outside the regular passageway which he knew to be obstructed, should have called for a light or felt for the obstruction, and was guilty of contributory negligence in not doing so. *Carbury v. Eastern Nut & Bolt Co.*, 27 R. I. 116, 60 Atl. 773. But where an employee's duty consisted of work on the track over which trains were being run to assist in the work of repairing, it was held that he was not guilty of contributory negligence because he failed constantly to look and listen for the approach of trains. *St. Louis, etc., R. Co v. Jackson*, 78 Ark. 100, 93 S. W. 746.

**POISONS—PURCHASE OF OPIUM FOR PERSONAL USE—CONSTITUTIONALITY OF HARRISON NARCOTIC ACT.**—The defendant, a physician registered under the Harrison Narcotic Act, was indicted for obtaining opium for his personal use by means of the prescribed forms. A demurrer was filed, denying that an offense was charged under the act, on the ground that the latter is unconstitutional, as a usurpation of the police power of the States, in so far as it departs from the purpose of raising revenue and attempts to make criminal the purchase of opium for personal use. *Held*, the demurrer is sustained. *United States v. Parsons*, 261 Fed. 223. See NOTES, p. 534.

**RAILROADS—RELEASE FROM LIABILITY—EFFECT AS TO REMOTE LESSEE.**—A contract was entered into between a railroad company and a private corporation whereby the railroad company agreed to construct and maintain a private sidetrack over its right of way for the sole use of the corporation, in consideration of the latter's release of the railroad company from all liability for damages to property of the corporation arising from fires started by the railroad's locomotives. It was specially stipulated that the contract was to be binding upon the successors and assigns of both parties. Certain property was destroyed by fire originating from a locomotive of the railroad company, and the plaintiff corporation, as subtenant of the successors in title, brought an action for damages. *Held*, the release from liability is binding upon the plaintiff. *Keystone Mfg. Co. v. Hines* (W. Va.), 102 S. W. 106.

In an action by the owners of a grain elevator against a railroad company for loss of the building and its contents by fire alleged to have been caused by sparks emitted by the defendant's locomotive, it was held that although there was no lease of the property entered into between the immediate parties, the plaintiffs were bound by the terms of the lease entered into by the plaintiffs' vendor, which provided that the railroad company should not be liable for any damage caused by fire resulting from the operation of its locomotives. *Graves & Hurburgh v. Toledo, etc., R. Co.*, 202 Ill. App. 478. A lease of a warehouse located on a railroad right of way was executed, by which lease the lessee and his assigns were given an option to renew the lease for another term, and the railroad was exonerated from all damages due to fires from its locomotives. During the term, the premises were assigned by the lessee, and the assignee continued in possession a certain length of time after the end of the term before notifying the rail-

road company that he held possession under the provisions of the original lease. It was held that the assignee was bound by the covenant of exoneration, since he had not exercised his option to renew within the time limited, and the consent of the railroad company to his occupation was sufficient consideration for his agreement to hold under the terms of the original lease. *Adler v. Western R. Co.*, 192 Ala. 507, 68 South. 361. In another case, a railroad company leased land to a partnership for a term at a nominal rental, the lease providing that the risk of loss occasioned by the proximity of the premises to the railway track should be borne by the lessee. The lease was not renewed nor the rent paid but the lessee remained in possession. Subsequently the partnership was changed and the new firm continued to occupy the property. Upon a destruction by fire of property belonging to the new firm, it was held that the provision regarding the burden of risk ran with the land and was binding on the new firm. *Kennedy v. Iowa State Ins. Co.*, 119 Iowa 29, 91 N. W. 831.

Where a portion of the right of way of a railroad was leased to a manufacturer for the erection of a plant thereon and the railroad company was released from liability for losses arising from fires caused by the railroad engines, it was held that a mortgagee of property situated on the premises, in the absence of knowledge of the exemption in the lease, was not bound by the release, but could recover from the railroad company to the extent of his interest in the property which was destroyed. The exemption was treated only as a contract of indemnity. *Milton Mfg. Co. v. Chicago, etc., R. Co.*, 237 Fed. 118. A contract between a railroad company and a contractor by which the latter agrees to hold the former harmless from any liability to a subcontractor for damages to machinery being utilized on the right of way does not release the railroad company from liability for the destruction by fire of the property of the plaintiff in the custody of the subcontractor, where neither the plaintiff nor the subcontractor releases the company from liability. *Sager v. Illinois Central R. Co.*, 190 Mo. App. 524, 176 S. W. 232. A covenant contained in a lease of railroad property used for warehouse purposes which relieves the company from liability for loss by fire does not bind an agent of the lessee in charge of the property for loss by fire of any personal goods of his own stored in the warehouse. *King v. Southern Pacific R. Co.*, 109 Cal. 96, 41 Pac. 786, 29 L. R. A. 755.

An agreement entered into between a railroad and a person allowed to erect a seedhouse on the railroad's right of way, by the terms of which agreement the latter agrees to save the railroad harmless from claims resulting from a possible destruction of the seedhouse through the fault of the railroad, does not prevent a third party from recovering damages from the railroad for the loss of seed stored in the seedhouse. *Alabama, etc., R. Co. v. Demoville*, 167 Ala. 292, 52 South. 406. But it has been held that no liability attaches to a railroad under a somewhat similar lease to reimburse insurers issuing policies on property destroyed by the negligence of the railroad. *Griswold v. Illinois Central R. Co.*, 90 Iowa 265, 57 N. W. 843, 24 L. R. A. 647. See also

*Stephens v. Southern Pacific R. Co.*, 109 Cal. 86, 41 Pac. 783, 29 L. R. A. 751.

In a lease of railroad property with a covenant exempting the railroad from liability for damages by fire it was held that the covenant passed with the land to the assignee of the lessor and the lease invested the assignee with the same right of protection and to the same extent as the lessor might have asserted. *Northern Pacific R. Co. v. McClure*, 9 N. D. 73, 81 N. W. 52, 47 L. R. A. 149.

For a discussion of the principles relative to the validity of such covenants, see 2 VA. LAW REV. 392.

**TRADE UNIONS—REMEDY FOR UNLAWFUL EXPULSION OF MEMBERS.**—The plaintiffs were suspended from the defendant trade union without notice of charges or opportunity to be heard. A suit was brought in equity to revoke the suspension. *Held*, the suspension was unlawful and the plaintiffs are restored to membership. *Gilmore v. Palmer*, 179 N. Y. Supp. 1. See NOTES, p. 531.

**WATER AND WATER COURSES—FLOOD WATERS OF RIVER NOT SURFACE WATERS.**—The lands of the appellant and appellee were subject to frequent overflows from an adjacent river. The appellee constructed an embankment which prevented the flood waters from entering upon his lands and which threw them out over the lands of the appellant, causing damage thereby. The appellee maintained that the flood waters from the river were surface waters, and could therefore be diverted from his lands by embankments. The appellant brought an action to recover damages sustained and also to obtain an injunction to prevent further obstructions by the appellee. *Held*, judgment for the appellant. *Gobin v. Piety* (Ind.), 125 N. E. 655.

It is sometimes held that the flood water of a stream which entirely passes beyond its flood banks and spreads over the adjacent country is surface water and may be treated as such by everyone. *Johnson v. Gray's Point Terminal R. Co.*, 111 Mo. App. 378, 85 S. W. 941. Under such a ruling the flood waters of a stream which overflow the flood banks would be subject to the various rules in regard to surface waters.

As to the rights of land owners to obstruct the flow of surface waters upon their land, the authorities are clearly divided. One line of cases adheres to the common law rule that surface water is the common enemy of all, and that a land owner is under no obligation to allow it to flow on or across his land from the land of a higher neighbor, but has the absolute right to shut it out from all access to his land, and no liability attaches for any injury resulting to another therefrom. *Gannon v. Hargadon*, 10 Allen (Mass.) 110; *Benthall v. Seifert*, 77 Ind. 302. Another line of authorities adheres to the civil law rule, by virtue of which lower land is subject to the servitude of receiving the natural flow of surface water from higher or adjoining land. *Martin v. Riddle*, 26 Pa. St. 415. See *Martin v. Jett*, 12 La. 501, 32 Am. Dec. 120, and note. For an exhaustive review of the authorities, see note to *Mizell v. McGowan*, 85 Am. St. Rep. 707, *et seq.* The courts of Vir-